

REMARKS

Claims 1 and 3-28 were pending in the Application, Claims 1, 3-13, and 24, were allowed, and Claims 14-23 and 25-28 were rejected. The rejections of Claims 25-27 were based on 35 USC 101 for claiming non-statutory subject matter, and 35 USC 112, first paragraph, for failing to make an enabling disclosure. The rejections of Claims 14-23 and 25-28 were further based on 35 USC 102(e) as being anticipated by Dillenger (US 6,732,139). Herein, Claims 1, 2, 17-19, and 21-23, are canceled, and Claims 14-16, 20, and 24-27, are amended.

Claims 14-23 were alleged to recite software programs and constructs, and not directed to any hardware to execute such software. Claims 14-23 are therefore amended to recite tangible computer embodiments and are not so broad as to claim mere concepts in the abstract.

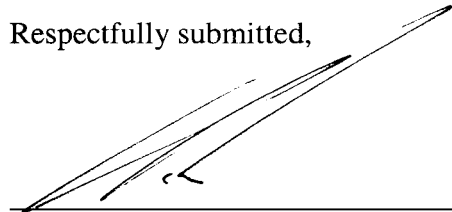
Claims 25-27 were alleged to recite subject matter which was not described in the Specification in such a way as to enable one skilled in the art to make or use the invention. Claims 25-27 are said to detail a single-means claim that is made up of other sub-component means. Claims 25-27 are therefore amended to more fully and properly recite the intended subject matter as was disclosed in the Specification.

Claims 25-27 are amended to use "machine" or "device" or "mechanism" instead of "means". Such changes should adequately place the claimed subject matter back within the scope of statutory subject matter and the enablement of the Specification should be obvious.

The amendments to Claims 14-23 and 25-28 are intended to differentiate over Dillenger, which distributes programs using remote java objects. This is in contrast to Claims 14-23 and 25-28 which recite global resource allocators at providers of servers that match whole and fractional virtual workload servers to offered workloads from customers. Dillenger hardly anticipates the claimed present invention. The Java virtual machine manages distributed heterogeneous network nodes. Abstract. It learns the needs of the programs over time, and does without an administrator. The claimed present invention does no guessing, it receives offered workload messages from each workload and objectively optimizes the number of whole servers and fractional servers reserved to each customer workload.

In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach the undersigned at (510) 742-7417. For payment of any additional fees due in connection with the filing of this paper, the Commissioner is authorized to charge such fees to Deposit Account No. 090441 (Order No. ARC920030046US 1).

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Gregory Scott Smith', is written over a horizontal line.

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